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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,037	06/28/2005	Klaus-Dieter Beller	1631	1829
36608 7590 02/12/2009 GUDRUN E. HUCKETT DRAUDT SCHUBERTSTR. 15A WUPPERTAL, 42289 GERMANY				
EXAMINER				
SHOME, ARUNDIPTA				
ART UNIT		PAPER NUMBER		
3771				
MAIL DATE		DELIVERY MODE		
02/12/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/541,037

**Applicant(s)**

BELLER, KLAUS-DIETER

**Examiner**

ARUNDIPTA SHOME

**Art Unit**

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8 is/are rejected.
- 7) ☒ Claim(s) 9-13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 28 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

Claims 8-13 are pending. This Action is in response to the amendment filed on 11-14-2008.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Raghuprasad (US Patent 5,186,164)

Regarding Claim 8, Raghuprasad discloses a device for taking powdered substances. The device has a storage receptacle 62 (Fig. 2). A supply tube 18 has an inner opening 20, the supply tube has a first end for dispensing substance and a pivotably supported second end.

A stationary cylinder body 89 has a through bore 88 (Fig. 2).

The second end of the supply tube has a unitary cylinder wall 22 that is pivotably mounted on the stationary cylinder body 89 and has a through opening 86. The supply tube is pivotable back and forth between a first position of non-use (see Fig. 2) and a second position of use (outlined figure in Fig. 2). In the first position the substance is air-tightly closed off in the storage receptacle, and there is no communication between the through bore 88 and the inner opening and through bore of the supply tube.

In the second position the inner opening of the supply tube and the through opening of the unitary cylinder wall communicate with the through bore of the cylinder and in the second position a dosage unit of the substance is present in the through bore of the cylinder body and is

conveyed from the through bore into the supply tube by an air stream or flows out (the through bore is between the receptacle and the supply tube, it must have the carry the substance from the receptacle to the supply tube).

***Allowable Subject Matter***

3. Claims 9 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
4. Claims 10-12 are objected to for depending on a rejected claim (Claim 8).

***Response to Arguments***

5. Applicant's arguments with respect to claims 8-13 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Staniforth (US Patent 7,089,934) teaches a powder dispenser with rotating drum (Figs. 8 and 9).

Moe (US Patent 2,059,135) teaches a dispensing device with a rotating supply tube.

Tritt (US Patent 2,613,018) teaches a dispensing device with a moving supply tube.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Staniforth (US patent 7,089,934) discloses an inhaler with a rotating drum (Fig. 8 and 9).

Barrows (US Patent 1,139,831) discloses a measuring device for powder with a pivoting supply tube.

Truitt (US Patent 2,613,018) discloses a device for dispensing granular materials.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ARUNDIPTA SHOME whose telephone number is (571)270-5539. The examiner can normally be reached on Monday through Friday 8:30am to 6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. S./  
Examiner, Art Unit 3771

/Justine R Yu/  
Supervisory Patent Examiner, Art Unit 3771